Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-509

THE SINGER COMPANY,

Petitioner,

against

PERMA RESEARCH & DEVELOPMENT COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

OBJECTION OF RESPONDENT TO MOTION OF SCM CORPORATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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SCM Corporation, which had filed an *amicus* brief in the Court of Appeals, did not seek Respondent's consent to filing such a brief in this Court until after Respondent's brief in opposition to the Petition for *Certiorari* was filed on November 5, 1976. Respondent has withheld its consent for two reasons. First, neither the motion nor the accompanying brief demonstrates any substantive interest of SCM in the question presented for review. Second, SCM's

papers fail to set forth any "facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties," as required by this Court's Rule 42(3). For these same reasons, we respectfully submit that the motion should be denied.

SCM does not assert that it has any interest in the evidentiary ruling of which Petitioner seeks review, although it professes "concern" that "$7 million in damages" was awarded against the party whose objections to admissibility were overruled below.[1]

Despite the broad claim that "this case is of widespread interest to the commercial-legal world"[2] it is clear from SCM's brief that it will in no way be affected by whether or not this Court accepts for review the narrow evidentiary question presented by the Petition. Any attention the District Court's judgment herein may have attracted among the patent bar arose from the District Court's construction of the contract before it, which is not an issue here.[3] Most of SCM's brief is in fact directed not to the question presented by the Petition, but to SCM's views of the possible commercial consequences of the District Court's application of New York contract law to the facts before it—all of which it presented in the *amicus* brief it filed in the Second Circuit (*see* SCM Br. p. 2). Even if SCM could

1. Brief of SCM Corporation ("SCM Br.") p. 3.

2. *Id.* at 1.

3. For example, as evidence of this "widespread interest," SCM cites "a discussion of the district court opinion in this case" at a Practising Law Institute program, SCM Br. at 1, n. That opinion, Appendix G, pp. 51a-125a, nowhere mentions the evidentiary rulings on which Singer later based its appeal strategy, including its Petition for *Certiorari*.

substantiate its gloomy prediction that the trial court's findings on the issue of the intent of the parties in connection with the contract sued upon will have an "inhibiting effect on the commercial development of new products" or on "the risks of dealing with the independent inventor,"[4] that would not be a reason for granting *certiorari* to review the question of what constitutes an adequate foundation for the admissibility of computer-generated evidence. Whatever precedent value the decision below may have in cases where the intent of contracting parties is in dispute would not be affected if this Court were to rule that the computer evidence should have been excluded; indeed, if the prior history of this protracted litigation is any guide, Judge Duffy's construction of the contract would at the very least be given great weight in the event of any retrial.[5]

SCM does not suggest that the question presented by the Petition may not be adequately dealt with by the Petitioner, or that SCM possesses any particular expertise that will assist the Court in determining whether the evidentiary rulings sought to be reviewed present any significant question of general interest or broad applicability. SCM's discussion of the question which the Petition presents for review—the Second Circuit's ruling on admissibility of certain evidence—is merely an echo of Singer's

4. *Id.* at 2-3.

5. See Judge MacMahon's discussion of the "law of the case" doctrine in his 1970 opinion denying one of Singer's several pre-trial motions for summary judgment on grounds previously considered by Judge Bryan, Appendix E, pp. 36a-37a, *Perma Research & Dev. Co. v. Singer*, 308 F.Supp. 743 (S.D.N.Y. 1970). Petitioner has not argued that the District Court's findings as to the intent of the parties present any important question of federal law meriting this Court's consideration. If what SCM really seeks is review by this Court of those findings, it has no standing to seek such review. *Cf. UAW Local 283 v. Scofield*, 382 U.S. 205, 209 (1965).

reliance on both the dictum in *United States v. Dioguardi*, 428 F.2d 1033 (2d Cir.), *cert. denied*, 400 U.S. 825 (1970) (SCM Br. p. 3; Pet. p. 13) and the dissent below (SCM Br. pp. 2, 4, 5-6; Pet. pp. 5, 7, 9-10, 11-12).[6]

Questions of standing aside,[7] the concerns of the putative *amicus* are even more abstract and hypothetical than those raised by the Petitioner.[8] Although SCM has been aware of this litigation at least since its motion to participate as *amicus curiae* in the Court of Appeals, it chose to wait three weeks after the filing of the Petition herein and several days after Respondent filed its brief in opposition, before presenting this motion. SCM suggests no substantial reason why this Court should grant this delayed application.

Respectfully submitted,

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Dated: November 15, 1976

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6. Despite the vigorous, quotable language of Judge Van Graafeiland, the dissenting opinion provides no support for the contention that this case involves any important question of federal law. On the contrary, the dissenting judge did not vote in favor of rehearing or even request a vote on Petitioner's suggestion for rehearing *en banc*, Appendix K, pp. 166a-167a.

7. See note 5, *supra*.

8. See Respondent's Brief, pp. 2-4.